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S/D J. WHITE

MAR 21 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT
STATE OF FLORIDA

BROWARD COUNTY, a political :
subdivision of the State of :
Florida, :

Petitioner, :

CASE NO.: 66,289

v. :

FOURTH DISTRICT
COURT OF APPEAL

CITY OF FORT LAUDERDALE and :
ROBERT O. COX, :

NO. 84-527

Respondent. :
_____ :

BRIEF OF AMICUS CURIAE,
STATE ASSOCIATION OF COUNTY COMMISSIONERS
OF FLORIDA

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STATEMENT OF THE CASE

This brief is filed by the State Association of County Commissioners of Florida as amicus curiae. The County Commissioners support the Petitioner, Broward County, and adopt the Statement of the Case and Statement of Facts set out in Petitioner's brief.

In addition, the County Commissioners would show the Court that although the question certified for review is narrowly drawn, this case raises an important issue of constitutional law regarding the authority of all Florida charter counties¹ under the home rule powers granted to charter counties in the 1968 Revision of the Florida Constitution. The Broward County charter amendment that is the subject of the certified question was enacted pursuant to Article VIII, Section 1(g) of the 1968 Constitution. This Section grants to charter counties "all powers of local self-government not inconsistent with general law," including the power to "enact county ordinances not inconsistent with general law." Most importantly for this case, Section 1(g) states that "[t]he charter shall provide which shall prevail in the event of a conflict between county and municipal ordinances." Article VIII, Section 1(g), Florida Constitution. Thus the 1968 Constitution gives the electorate of a charter

1. There are presently eight (8) charter counties in Florida. They are: Dade, Volusia, Sarasota, Broward, Pinellas, Duval, Palm Beach, and Hillsborough counties.

county broad power to provide for consistent countywide regulation unaffected by conflicting municipal ordinances.

However, charter counties have been prevented from fully exercising their constitutional authority. In Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978), this Court held that a charter county's power to enact countywide regulations is constrained by Article VIII, Section 4, of the Florida Constitution which sets out procedures for a "transfer of powers" from one government entity to another. Section 4 requires initiation by the governing body of each entity, and approval by the electors of each entity, unless otherwise provided by law. In the court below, the Fourth District Court of Appeal, relied upon and expanded the Sarasota County decision. The Fourth District held that Broward County's charter amendment, providing that a county ordinance relating to handgun management would prevail over a conflicting municipal ordinance on the same subject, constitutes a partial transfer of power which triggers the initiation and approval procedures of Article VIII, Section 4. Amicus curiae respectfully suggests that if this Court approves the Fourth District's decision by answering the Certified Question in the affirmative, the Court will effectively nullify the power granted to charter counties in Article VIII, Section 1(g). The resolution of this issue is of great importance to Florida charter counties and to all counties that may consider adopting a charter in the future.

ARGUMENT

I

THE COURT SHOULD RECONSIDER THE RATIONALE OF
SARASOTA COUNTY V. TOWN OF LONGBOAT KEY.

Home rule powers are of relatively recent origin in Florida. For the greater part of Florida's history, county and municipal governments were regarded as creatures of statute, without inherent power of their own. The authority of local governments in all matters, including purely local matters, was limited to that expressly granted by the legislature in general law, or by special or local laws. Over time this governmental structure proved to be inadequate to meet the needs of a dynamic, fast-growing state. Article VIII of the 1968 Revision of the Florida Constitution completely revised the structure of local government in Florida. All counties are given the option to create a charter government in which the county government is established and operates under a charter approved by the electors of the county. Otherwise the county continues under the more traditional non-charter government.² Article VIII grants an important

2. The legislature granted broad home rule powers to non-charter counties by statute, Section 125.01, Florida Statutes (1983)

additional power to charter counties. It allows the electorate of a charter county to make certain county ordinances effective throughout the county regardless of conflicting municipal ordinances. Article VIII, Section 1(f) provides:

Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not consistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict. [emphasis added]

By contrast, Article VIII, Section 1(g), provides charter counties significantly greater powers:

Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances [emphasis added]

Municipalities were also empowered to adopt ordinances and exercise governmental functions without specific legislative approval, Article VIII, Section 2(b), Florida Constitution. It should be noted, however, that Section 2(b) contains no requirement that a municipality concur in any regulation that prevails over conflicting municipal ordinances under charter county powers. In addition, Article VIII, Section 4, provides for a complete transfer of specified functions or powers between government entities, as follows:

By law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferor and approval by vote of the electors of the transferee, or as otherwise provided by law. Article VIII, Section 4, Florida Constitution.

The source of the controversy in this case is the apparent conflict between charter county powers in Section 1(g) and the requirements of Section 4. In Sarasota County v. Town of Longboat Key, supra, this Court held that Section 4 constrains the authority of charter counties to make an ordinance effective countrywide. Amicus curiae respectfully suggests that the Court should reconsider the rationale of Sarasota County and hold that Section 4 does not apply to a charter county's exercise of the authority granted in Section 1(g) to make a county ordinance prevail over a conflicting municipal ordinance.

Section 4 is clearly distinguishable from Section 1(g).³ Section 4 is a permissive provision that facilitates voluntary transfers of the functions or powers of one government entity to

3. For a comprehensive discussion of the history and purpose of these provisions see Note, Charter County Government in Florida: Past Litigation and Future Proposals, 33 U.Fl.L.Rev. 505 (1980-81).

another. Before the 1968 revisions were adopted, transfer of powers or functions between government entities required a local bill or special constitutional amendment. The Commentary accompanying Article VIII, Section 4, Vol. 26A, Florida Statutes Annotated 331 (1970), recites that it is "an entirely new section" and that previous transfers of power dealt with assessment and collection of municipal taxes. Appropriately, Section 4 requires initiation by each governing body and approval by each electorate unless otherwise provided by law. Section 4 obviously is not intended to address conflicts between county and municipal ordinances nor is there any indication that it was intended to limit charter counties' powers. By contrast, Section 1(g) expressly addresses city-county conflicts and grants to charter county electorates the power to resolve conflicts.

It is well settled that in construing constitutional provisions, the courts must ascertain and give effect to the intent of the framers and the electors. Metropolitan Dade County v. City of Miami, 396 So.2d 144 (Fla. 1981); Bailey v. Ponce de Leon Port Authority, 398 So.2d 812 (Fla. 1981); Williams v. Smith, 360 So.2d 417 (Fla. 1978). There is nothing in Article VIII to indicate that the framers intended for Section 4 to override the powers granted to charter counties in Section 1.

In addition, this Court has held that the Florida Constitution should be construed to give effect to every clause and every part thereof. Burnsed v. Seaboard C. R. Company, 290 So.2d 13 (Fla. 1974), and a construction of one clause which

nullifies a separate clause should not be adopted. City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1 (Fla. 1972). The Fourth District's decision in this case demonstrates that if Section 4 is applied to a charter county's exercise of its authority under Section 1(g) it will effectively nullify the charter county's authority. Therefore, the Court should withdraw from its opinion in Sarasota County v. Town of Longboat Key, supra, and hold that Section 4 of Article VIII does not apply to a charter county charter amendment specifying that county ordinances prevail over municipal ordinances on a particular subject, pursuant to Article VIII, Section 1(g) of the Florida Constitution.

II

THIS COURT'S DECISION IN SARASOTA COUNTY V. TOWN OF LONGBOAT KEY DOES NOT MANDATE THE RESULT REACHED BY THE FOURTH DISTRICT.

Alternatively, the Court should limit the scope of the Sarasota County holding consistent with later cases that the Fourth District did not recognize. The Court of Appeal relies exclusively on this Court's opinion in Sarasota County v. Town of Longboat Key, 355 So.2d 1197 (Fla. 1978). However, the Fourth District fails to recognize later decisions of this Court that explain the Sarasota County decision and clearly distinguish the situation in Sarasota County from the situation in the present case. In Miami Dolphins v. Metro. Dade County, 394 So.2d 981 (Fla. 1981), the Court explained that "had the [Sarasota]

ordinances been voted on and approved, the county would have acquired full responsibility for five functions previously exercised by the city. No longer would the cities involved have had any control over those functions which would have become the responsibility of the county alone." 394 So.2d 984-85. In addition, in City of Palm Beach Gardens v. Barnes, 390 So.2d 1188 (Fla. 1980), the Court noted that in the Sarasota County case "the entire police power function of the Town of Longboat Key was being absorbed by the county government and the town no longer would have had any supervisory or other control of its police power function." 390 So.2d at 1189. Thus clarified, the Sarasota County decision applies only where a municipality would be divested of complete powers or functions by a charter county's action, and the city is prevented from enacting concurrent regulations on the same subject. Nothing in Broward County's charter amendments (Appendix to Brief of Petitioner at Tab A) purports to give the county exclusive power in the area of handgun management or prohibits concurrent, compatible municipal ordinances.

The facts recited in the Fourth District's opinion clearly establish that Broward County's Charter and the amendments at issue in this case are within the spirit and the letter of Section 1(g) of Article VIII. Section 8.04 of the Broward County Charter entitled "CONFLICT OF COUNTY ORDINANCES WITH MUNICIPAL ORDINANCES" was amended by adding the following language:

A county ordinance shall also prevail over a municipal ordinance in matters relating to handgun management within the parameters set forth in Section 8.19 of this chapter.

The companion amendment to Section 8.19 of the Charter, entitled "HANDGUN MANAGEMENT" states:

The county commission may adopt a countywide ordinance relating to handgun management which may provide for law enforcement authorities to make criminal history checks for handgun purchasers prior to the delivery of a handgun not to exceed ten (10) days, exclusive of Saturdays, Sundays, and holidays, and to provide standards for transfers of handguns and licensing of handgun dealers.

It is important to note that the amendments do not either expressly or impliedly prohibit a municipality from exercising its governmental powers on the subject. Both the county and the municipality may regulate concurrently on the subject of handgun management so long as the regulations do not conflict.

The Fourth District erroneously construes the Broward County amendments as a "partial transfer of municipal authority" (Slip Opinion at page 4) that must comply with Article VIII, Section 4. The Court of Appeal thus overlooks this Court's opinions in Miami Dolphins Ltd. v. Metropolitan Dade County, supra and City of Palm Beach Gardens v. Barnes, supra. The Certified Question in this case should be answered in the negative.

The Fourth District seems to find it significant that the county "concedes that the purpose of the amendments is to restrict the city's authority over handgun management and that without. . .the charter amendment the City of Fort Lauderdale

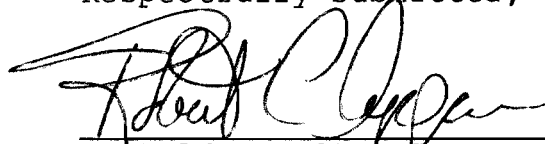
would retain the authority to regulate handgun usage notwithstanding any county ordinance to the contrary." (Slip Opinion at page 5). This statement misses the point. The obvious purpose of the Broward Charter amendments is to provide uniform countywide regulation of handgun usage. The countywide regulation necessarily restricts the City's regulation of this subject, but it is a constitutionally sanctioned restriction because the Broward County electors have chosen the charter form of county government.

CONCLUSION

The authority to establish effective countywide regulation despite conflicting municipal ordinances is an important distinction between charter and non-charter counties. The Broward County charter amendment is a proper exercise of that constitutional authority. Further, it does not remove a complete police power function from the city. Therefore, at a minimum, the Certified Question should be answered in the negative. Further, to give full effect to the intent of the framers of the 1968 Revision of the Florida Constitution, and the electors who approved it, this Court should withdraw from its holding in Sarasota County v. Town of Longboat Key, supra, and hold that Article VIII, Section 4 does not apply when a charter county exercises the authority granted in Article VIII, Section 1(g) to

provide that a county ordinance prevails over a conflicting municipal ordinance.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief of Amicus Curiae has been furnished by U.S. mail to SUSAN F. DELEGAL, ESQUIRE, General Counsel for Broward County, (Janet Lander, Esquire) Governmental Center, Suite 423, 115 South Andrews Avenue, Fort Lauderdale, Florida 33301; to EUGENE L. HEINRICH, ESQUIRE, McCune, Hiaasen, Crum, Ferris & Gardner, Attorneys for Respondents, Post Office Box 14636, Fort Lauderdale, Florida 33301; and SAMUEL S. GOREN, ESQUIRE, Josias and Goren, Attorneys for Appellee, Jane Carroll, 3099 East Commercial Boulevard, Fort Lauderdale, Florida 33308, on this 21st day of March, 1985.


ATTORNEY